

**U.S. Department of Labor**

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Date: February 26, 1999

Case No.: 1998-LHC-0900, 1998-LHC-0901, 1998-LHC-0902

OWCP No.: 5-84503, 5-99575, 5-102450

ALTON BRANCH,  
Claimant,

v.

NEWPORT NEWS SHIPBUILDING  
AND DRY DOCK CO.,  
Employer.

Appearances:

Gregory Camden, Esq.  
For Claimant

Lawrence Postol, Esq.  
For Employer

**DECISION AND ORDER**

This decision arises from a claim filed by Alton R. Branch ("Claimant") against Newport News Shipbuilding and Dry Dock Company ("Employer" or "the shipyard") under the Longshore and Harbor Workers' Compensation Act ("the act") as amended, 33 USC 901 et. seq. Claimant seeks temporary total disability compensation for the period July 31, 1997 to December 1, 1998 and from April 20, 1998 to September 16, 1998. The primary

issue at the hearing was whether Claimant's back disability, for which he required surgery, was job related or not.

A formal hearing was held in this case on October 20, 1998 at Newport News, Virginia, at which both parties were afforded a full opportunity to present evidence and argument as provided by law and applicable regulations. The findings and conclusions which follow are based on a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.

### **STIPULATIONS**

The parties have stipulated to and I find the following:

1. That an employer/employee relationship existed at all relevant times;
2. That the parties are subject to the jurisdiction of the act;
3. That, on September 3, 1996 and April 28, 1997, Claimant sustained injuries to his back arising out of and in the course of his employment;
4. That a timely notice of injury was given by Claimant;
5. That Claimant filed a timely claim for compensation;
6. That Employer filed a timely first report of injury with the Department of Labor and a timely notice of controversion;
7. That Claimant's average weekly wage at the time of the September 3, 1996 injury was \$746.43, yielding a compensation rate of \$398.79;
8. That Employer has not voluntarily provided compensation for either the September 3, 1996 or April 28, 1997 injuries;
9. That medical services are an issue in that Claimant seeks medical treatment for a surgical procedure performed by Dr. Griffith;
10. That Claimant also seeks temporary total disability benefits from July 31, 1997 to February 1, 1998 and from April 20, 1998 to September 16, 1998;
11. That Claimant has returned to work at the shipyard;

(Tr. 7-10).<sup>1</sup>

## **ISSUE**

Was Claimant's back disability causally related to an on-the-job injury?

## **FINDINGS OF FACT**

### **A. Testimony of Alton Branch**

Mr. Branch is a forty-five year old high school graduate, who has been employed by the shipyard since 1971 (Tr. 21). He works as a ship fitter, which requires him, among other things, to make up bulkheads, put together shelves, and carry jack clamps and bootie jacks (Id.). He is required to lift various items weighing approximately fifty pounds or more, including foundations (Tr. 22). The position also requires him to climb, crawl and kneel, depending on the nature of the job on that particular day. Sometimes, he has had to climb 30 to 50 feet or more using ladders or stairs (Tr. 22). Crawling is required when working in the bottom of a ship (Tr. 22). Bending is also required when making bulkheads or crawling through the bottom and the holes (Tr. 23).

On September 3, 1996, Branch suffered an injury while working as a shipfitter for the shipyard. The injury occurred when he was walking around a welding box and tripped over a wire (Tr. 23). After he fell, he felt pain in his back, but he stood up and resumed his work because he thought that he would be all right (Tr. 23). However, his pain persisted and two weeks later he reported to the shipyard clinic for treatment because of pain. Dr. Reid of the shipyard clinic imposed light-duty restrictions on Branch's work and prescribed muscle relaxers and physical therapy. This treatment helped Branch intermittently. He then returned to full duty at the shipyard (Tr. 23-4).

On April 28, 1997, Branch suffered a second injury when he was in the bottom of a ship in a confined space. As he described it, the space in which he was working was very small. He "tried to put the chops on it and they had to reek the one hole to get to the

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<sup>1</sup> The following abbreviations are used as a citation to the record:

CX - Claimant's exhibit;  
EX - Employer's exhibit; and  
Tr. - Transcript of hearing.

other hole because you couldn't fit your whole body in one place without twisting and turning, and I ripped myself" (Tr. 24-5). Branch testified that he had been working in that space all day. Afterwards, he went home, and his back was in a great deal of pain. He was also having pain from his hip down to his knee and foot. He had experienced pain running down his leg in September of 1996, but now the pain was in his foot as well (Tr. 25). He then went back to the clinic and saw Dr. Reid, who again placed Branch on work restrictions and prescribed physical therapy (Tr. 25). However, Branch did not undergo physical therapy because he knew from his previous injury what the exercises were. He continued light duty, and his restrictions expired. He returned to the clinic to ask for a two-week extension on the restrictions because he was still having problems. He was working at full duty through the end of May and the beginning of June of 1997 (Tr. 26-7).

On June 17, 1997, Branch got out of bed to brush his teeth and go to work, when he sneezed and felt severe pain in his left side. He returned to the clinic that morning and again saw Dr. Reid (Tr. 27), who, after examining him, gave him a shot in the hip and told him to see his family doctor, who was Dr. Stokes (Tr. 28). Dr. Stokes referred him to Dr. Allen, who had treated Branch in 1992 for a back problem and who had performed surgery on his back. Branch saw Dr. Allen on two occasions, after which he told Branch that he was "okay" (Tr. 28). Branch knew that he was not "okay"; so he went back to Dr. Stokes, who referred him to Dr. Griffith. Claimant recalls that Dr. Griffith ordered an MRI, after which he operated on Branch's back (Tr. 28-9).

The surgery helped him for a while, but he was out of work for five to seven months. He attempted to come back to work at the shipyard in January of 1998 (Tr. 29). He was on restrictions assigned by Dr. Griffith. His supervisor sent him to the clinic, and he was told that his injury was personal and that he could not come back to work from a personal injury. Branch then returned to Dr. Griffith and told him that he could not return to work on restrictions because his injury was deemed personal. Dr. Griffith removed the restrictions and returned Branch to full duty (Tr. 29).

On February 1, 1998, Claimant returned to the shipyard on full duty. He attempted to work but experienced pain which shifted from his left side to his right side, and he also experienced numbness in his foot. Because of this, he went back to see Dr. Stokes and he tried to make an appointment with Dr. Griffith, but the latter was unavailable. Dr. Stokes placed Branch on restrictions, under which he could not do work required of his job. Therefore, he could not return to work, and no other work was made available to him (Tr. 29-30).

Branch returned to work at the shipyard on September 17, 1998, without restrictions. He had asked Dr. Stokes to remove the restrictions so that he could return to work (Tr. 30-1). Branch still experiences pain in his hip and numbness in his left leg and

foot while he works in his current position. Claimant is not doing much crawling (Tr. 31).

## **B. Records and Deposition of James W. Reid, M.D.**

James W. Reid, M.D. has been in private practice in Yorktown, Virginia since August 15, 1998 (CX 17-4). Prior to going into private practice, he was employed by the shipyard as its occupational health physician for eleven years (CX 17-4). In that position, he was the primary physician at the shipyard clinic (CX 17-4).

Dr. Reid testified that he had reviewed Claimant's medical records on file at the clinic as well as Dr. Stokes' June 18, 1997 note (CX 17-5). He had not reviewed any of Dr. Stokes' other records or any of Dr. Allen's or Dr. Griffith's records (CX 17-6).

The shipyard clinic records reveal that Dr. Reid treated Claimant for back problems resulting from both his September 3, 1996 and April 23, 1997 injuries (CX 7-1-7). After the September 3, 1996 and April 23, 1997 injuries (CX 7-1-7). After the September 3, 1996 incident, the clinic treated Branch through September, October and November, 1996 and returned Branch to regular duty as of January 2, 1997 (CX 7-3). He returned to the clinic on April 28, 1997, complaining of lower left back pain and left leg pain after crawling through the inner bottom of a ship. Dr. Reid placed him on light duty (CX 7-2,3). On May 12, 1997, the clinic notes indicate that Claimant returned, at which time he stated that he felt better but that he still had some pain in his left hip and leg and wanted to continue restrictions for two more weeks (CX 7-2).

During his deposition, Dr. Reid confirmed that he drafted the clinic note dated June 17, 1997 concerning Mr. Branch's visit to the shipyard clinic on that date (CX 17-7-8). At that time, Mr. Branch complained that he had sneezed at home, after which he developed pain in his back and pain radiating down to the left lower extremity. Dr. Reid performed an examination at that time, including an evaluation of his back and his gait. He found that Claimant's gait was abnormal and that he had some spasm in his back (CX 17-8). Branch's deep tendon reflexes on the left were somewhat decreased. Also, there were abnormal neurological findings in the ankle, which findings led him to the conclusion that Branch was suffering from a herniated disc on the left (CX 17 8-9).

On the second page of the June 17, 1997 note, Dr. Reid noted that the workers' compensation department informed him that Branch's problem was personal (CX 7-7). Dr. Reid disagreed with that determination because he believed that Branch's sneezing was "the last event in an industrial injury," for which Dr. Reid had treated him in 1996 and 1997 and which had been diagnosed as a sprain in the low back (CX 17-9). The injuries in question were those which took place on September 3, 1996 and April 28, 1997 (CX 17-9). Dr. Reid believed that the herniation was related to the April, 1997 event but that Claimant also suffered a 1996 injury which had begun to get better toward the end of 1996 (CX 17-10). Dr. Reid opined that Branch's herniated disc resulted from a combination of the

September 1996 and April 1997 injuries and the sneeze in June of 1997 (CX 17-11).

During the deposition, Dr. Reid reviewed a report of a myelogram that was taken on August 12, 1997, two months after the sneeze. The report indicates that it is unclear whether the disc problem is a prolapse or scarring (CX 17-25). Dr. Reid remains of the opinion that the September 3, 1996 and April 28, 1997 events contributed to the herniated disc in June of 1997 (CX 17-26).

### **C. Deposition of James F. Allen, M.D.**

Dr. Allen is a neurosurgeon practicing in Hampton, Virginia (CX 18-3). In 1992, he had an opportunity to treat Branch for back and leg pain upon referral from Branch's primary physician, Dr. Stokes (CX 18-4). At that time, Dr. Allen diagnosed a herniated disc at L4,5 with the associated radiculopathy in the associated nerve. He recommended a steroid injection, which provided some relief. In May of 1992, he scheduled Branch for surgery on the herniated disc, which he performed on May 20, 1992 (CX 18-4, EX 10). The surgery was a semi-laminectomy discectomy at L5, S1, which involved going into the lumbar spine region, making a small window in between the bones of L5 and the sacrum, and removing the central part of the disc (CX 18-5). Branch was allowed to return to work on August 24, 1992 with no restrictions (CX 18-5). The last time that Dr. Allen saw Branch for that condition was on September 25, 1992 (CX 18-5).

Dr. Allen saw Mr. Branch again on July 8, 1997 (CX 18-5). This visit was again at the request of Dr. Stokes and occurred as a result of a sudden onset of Mr. Branch's left-leg pain (CX 18-6). Dr. Allen examined Mr. Branch and noted evidence of a sciatic nerve irritation and irritability as well as pain on the left side with positive straight leg raise (CX 18-6). Dr. Allen also noted some sensory abnormalities corresponding to the S1 sensory dermatome on the left and an absent ankle reflex. This indicated an involvement of the S1 nerve root at the L5-S1 level (CX 18 6-7). Mr. Branch had had an MRI of the lumbar spine, which Dr. Allen reviewed during the visit. Dr. Allen interpreted the MRI as showing scarring at the operative site with no recurrent disc (CX 18-7). Dr. Allen noted that there was radiculitis or inflammation with no evidence of recurrent herniated disc (CX 18-7). Also, referring to the radiculitis, he noted that Mr. Branch became symptomatic following a severe sneeze on June 17, 1997 (CX 18-7).

Dr. Allen stated that his notes indicated that the MRI he reviewed was performed on June 24, 1997 (CX 18-8). The report of the MRI indicated that there were basic post-operative changes where the 1992 surgery was performed (CX 18-8).

Dr. Allen examined Mr. Branch on July 15, 1997, and found that he was in no acute distress, was able to bend forward to 90 degrees and touch his toes, had no paraspinous muscle spasm, and had reflexes that were equal and normal at the knees, normal in the

right ankle and slightly depressed in the left ankle. He was able to walk easily on his heels and toes and hop on either leg without difficulty or discomfort. Dr. Allen discharged him from care with no restrictions (CX 18-9-10). He has not seen Mr. Branch since that time (CX 18-10).

Dr. Allen testified that, based on his review of Mr. Branch's records, his diagnosis for the injury sustained on September 3, 1996 would have been muscle strain. He stated that the records indicate that it was greatly improved by November 13, 1996, and appeared to have been completely resolved by January 2, 1998 (CX 18-16). He did not see Branch during this period, and his opinion was based solely on his review of Dr. Reid's clinic notes (CX 18-16). Dr. Allen also opined that the April 28, 1997 injury was a muscle strain and that Branch had not recovered from that injury prior to the event of June 17, 1997 (CX 18-17). He stated that the April 28, 1997 problems were still ongoing at that time (CX 18-17). Dr. Allen testified that the statement in his June 26, 1998 report that Branch's muscle strains had "completely" resolved before June 17, 1997 might have been an overstatement because the records indicate that he still had some pain as of May 12, 1997 (CX 18-17).

During his deposition, Dr. Allen reviewed Dr. Reid's note of June 17, 1997, which he had never seen before (CX 18-17-18). He also reviewed a letter to Dr. Griffith from counsel for Branch. Dr. Allen stated that the problems that Branch was having as a result of his April 28, 1997 incident had most likely resolved by June 17, 1997, because, at the time of his May 12, 1997 visit, his restrictions were to last two more weeks. His opinion is based on the fact that it was a month later before Branch went back to the clinic after the sneezing incident (CX 18-19). Still, he opined that the muscle strain of April of 1997 may have played a part in Branch's condition as of June 17, 1997 (CX 18-23).

Dr. Allen stated that he changed his opinion as to whether Branch suffered from a recurrent disc herniation after being supplied additional medical records, specifically Dr. Griffith's records, which document the presence of a recurrent herniated disc on the basis of his operative report (CX 18 25-6).

In an October 16, 1998 report, after reviewing Claimant's deposition testimony, Dr. Allen opined that the two work injuries had fully resolved with no permanent disability and that they did not contribute to the herniated disc (EX 28).

#### **D. Dr. John A. Williamson's Opinion**

Dr. Williamson, a board-certified orthopedist, examined Claimant on July 7, 1997. In his initial July 7, 1997 report, Dr. Williamson noted that the work injuries had "resolved," and, thus, he was not sure that Claimant's current problems were related to any injury (CX 11-7-8). In a September 5, 1997 report, Dr. Williamson did note that Claimant had an "exacerbation of a pre-existing condition," but he was unclear whether the pre-existing condition was the 1992 disc surgery or the later injuries (CX 11 at 6).

After reviewing the complete medical records, in a June 10, 1998 "final report," Dr. Williamson opined that the 1996 and 1997 work injuries did not cause Claimant's herniated disc. Rather, those injuries "fully resolved," and the herniated disc was caused by a June 17, 1996 sneeze at home (EX 5).

Later, after reviewing Claimant's deposition testimony, he reaffirmed that the 1996 and 1997 work injuries "fully resolved with no permanent impairment" and stated that they "did not contribute in any way to his herniated disc for which he had surgery on August 20, 1997" (EX 31).

#### **E. Medical Records of Douglas L. Griffith, M.D.**

Dr. Griffith examined Mr. Branch for the first time on August 11, 1997. Mr. Branch was referred to Dr. Griffith for a second opinion after Dr. Allen told Mr. Branch that surgery could not benefit him and that he should return to work (CX 3-8). Dr. Griffith reviewed the MRI and determined that a myelogram was necessary (CX 3-8). On August 14, 1997, Dr. Griffith noted that Mr. Branch's post-myelogram CT scan was very suspicious for recurrent disc herniation. Therefore, he determined that it was necessary to proceed with a repeat lumbar laminectomy and discectomy at L5 - S1 (CX 3-7).

In a September 2, 1997 note, Dr. Griffith noted that Mr. Branch's staples were removed and that he had significantly improved compared to his pre-operative status (CX 3-6). Mr. Branch was told to return in a few weeks (CX 3-6).

On October 9, 1997, Mr. Branch returned to Dr. Griffith. He was having minimal pain in his back and down his legs and was experiencing residual numbness in the outside of the foot and calf. He recommended that Mr. Branch exercise and undergo physical therapy and a work-hardening program at the Rehab. Institute of Virginia (CX 3-5). He noted that Claimant's problem appeared to be "workman compensable," depending on the medical records and treatment given to him from the shipyard physician (CX 3-5).

On December 8, 1997, counsel for Mr. Branch met with Dr. Griffith to discuss Mr. Branch's condition and to review the shipyard clinic's medical records. In a letter dated December 17, 1997, counsel for Mr. Branch summarized the discussion of December 8, 1997 and, on December 24, 1997, Dr. Griffith confirmed that the summary provided in the letter was correct as to Mr. Branch's history and Dr. Griffith's opinions (CX 1 1-2). Dr. Griffith also offered his opinion that Mr. Branch suffered a new injury on April 23, 1997 (based on the April 28, 1997 note, which stated that Mr. Branch injured his back while crawling through tubes the Wednesday before). Claimant first began complaining of radicular symptoms at the time. Later, on June 17, 1997, he got out of bed and sneezed, causing an increase in his left leg symptoms. Thereafter, Dr. Griffith requested a myelogram, which showed a distortion of the nerve root at the S1 level, and a CT scan, which showed a soft tissue defect (CX 1-2).

Based on this history and these findings, Dr. Griffith determined that surgical intervention was appropriate. During the operation, Dr. Griffith found both scar tissue and a recurrent disc problem. Dr. Griffith opined that the scarred tissue was the result of the previous surgery performed by Dr. Allen in 1992 (CX 1-2).

Dr. Griffith also provided a prognosis for Mr. Branch: he stated that he intended to release him to light-duty employment at his next appointment following the meeting between Dr. Griffith and counsel for Mr. Branch. He believed that Mr. Branch would be able to return to full duty within three or four months or that permanent restrictions would be assigned by then (CX 1-2).

Dr. Griffith stated further that Mr. Branch was a credible and "straight forward" individual. He provided his medical opinion within a reasonable degree of probability that the treatment he rendered to Branch, including the surgery, was indeed related to the injury that he reported to the shipyard as having occurred on April 23, 1997 (CX 1-2).

On January 28, 1998, Dr. Griffith saw Mr. Branch and found that he was improved and experiencing no pain. He was released to return to work at his regular job on February 2, 1998 (CX 3-4, 10).

On March 18, 1998, Claimant returned to Dr. Griffith with complaints of numbness in his legs when he tried to work at his regular job (CX 3-3). Dr. Griffith noted that Mr. Branch was willing to work with restrictions but could not do his regular job. Because the shipyard was not treating his injury as a work injury, he was unable to work with restrictions (CX 3-3). Also on that date, Dr. Griffith completed a physical capacities evaluation, in which he stated that Mr. Branch would not be able to sit for a total of two hours shifting positions but without an opportunity to stand (CX 2-2). He limited Mr. Branch's lifting to 5-20 pounds occasionally but allowed no lifting in excess of twenty pounds (CX 2-1).

In a September 9, 1998 report, Dr. Griffith opined that the prior work injuries appeared to have resolved and that the "sneeze, was probably directly related to his subsequent second surgical procedure" (EX 25). In a September 22, 1998 report, he stated that the prior work injuries appeared to "resolve before June 17, 1997 and caused no permanent impairment" (EX 26).<sup>2</sup>

## **DISCUSSION**

The first issue is whether Claimant's injury caused his back disability. In this connection, the presumption in section 20 (a) of the act aids him. Section 20 (a) provides that, "in any proceeding for enforcement of a claim for compensation under this act, it shall

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<sup>2</sup> In a December 17, 1997 letter (CX 1), Claimant's counsel attributes to Dr. Griffith the opinion that Claimant's disc problem was injury related. Dr. Griffith endorsed the letter, which pre-dated Dr. Griffith's September, 1998 report (EX 25,26) by at least nine months.

be presumed, in the absence of substantial evidence to the contrary - (a) that the claim comes within the provisions of the act..." In order to obtain the benefit of the presumption, Claimant must establish that he suffered some harm or pain and an accident occurred or working conditions existed which could have caused the harm. Kelaita v. Triple A Machine Shop, 13 BRBS 326 (1981). The parties have stipulated that Claimant suffered two on-the-job injuries (stipulation no. 3). Further, Dr. James Reid's testimony establishes a prima facie case that Claimant has been partially disabled and that that disability could have resulted at least in part from his on-the-job injuries (CX 17 at 11). Hence, Claimant has successfully invoked the section 20 (a) presumption. That being the case, the burden shifts to Employer to go forward with countervailing evidence to rebut the presumption that the injury was caused by Claimant's employment. Swinton v. J. Frank Kelly Inc., 554 F. 2d 1075 (D.C. Cir.), cert. den'd 429 US 820 (1976).

Here, Employer has adduced countervailing opinion evidence from Dr. Allen (CX 18 at 26), Dr. Williamson (EX 31), and Dr. Griffith (EX 25) to the effect that there was no causal relationship between any ruptured disc and Claimant's on-the-job injuries. I find that this substantially rebuts the presumption, which then falls out of the case, and the burden of proof returns to Claimant. Traveler's Insurance Co. v. Belair, 412 F. 2d 297 (1st Cir. 1969).

Because the burden of proof is again on Claimant, in order to award benefits in this case, I would have to credit the opinion testimony of Dr. Reid over and above that of three naysaying board-certified physicians. Director, OWCP v. Greenwich Collieries, 114 S. Ct. 2251 (1994). For the following reasons, I cannot credit Dr. Reid's opinion over the opinions of the three others:

1. Although Dr. Reid was Claimant's treating physician, so were Dr. Allen and Dr. Griffith. Thus, Dr. Reid's advantage from being a treating physician is canceled out. Claimant argues that Dr. Reid is the only physician who treated Mr. Branch for both of his injuries. However, this fact is mitigated by the additional fact that Dr. Reid did not treat him for his herniated disc as did Dr. Allen and Dr. Griffith.

2. Dr. Reid is not board certified in anything so far as this record shows, but Dr. Allen is a board-certified neurosurgeon, as is Dr. Griffith; and Dr. Williamson is a board-certified orthopedic surgeon.<sup>3</sup>

3. On the face of the record, it might appear that Dr. Reid's opinion deserves weight because he was a shipyard physician. Indeed, Dr. Reid was employed by the shipyard during the time when he treated Claimant and when he first rendered an opinion concerning causation. However, mitigating this point is the fact that Dr. Reid has since left

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<sup>3</sup> The parties have consented that I may take official notice of these board certifications even though the record does not specifically include the physicians' curricula vitae. See letter to me from Lawrence Postol, Esq. dated December 31, 1998.

the shipyard (CX 17 at 5), and he had already done so at the time of his deposition (Id.). Further, it is unclear when he decided to leave the shipyard and on what terms. Thus, it is difficult to credit him with a pro-shipyard bias that would add to his credibility in this case.

4. Claimant makes much of the allegation that Dr. Reid was the only physician who has remained steadfast in his opinion. I do not regard the changes of opinion in this case as requiring a significant devaluation of the opining physicians' ultimate conclusions. It is true that Dr. Allen had to recant his previous view that Claimant's symptoms had "completely" resolved before June 17, 1997 (CX 18-17). It is also true that Dr. Griffith did give two seemingly different opinions as to the causal relationship between the September and April injuries on the one hand and the disc herniation on the other (CX 1, EX 25).<sup>4</sup> However, his later opinion seems to rule out job-related causation (EX 25,26). Likewise, Dr. Williamson moved from doubt as to the causal relationship of Claimant's job-related injuries and his back disability to one of significantly greater certainty (EX 17; EX 31).

To be sure, I would be more comfortable with evidence demonstrating greater consistency and certitude. However, I have no reason to believe that these physicians' ultimate conclusions of noncausation by the work-related injuries are not honestly held or are not based on sound medical judgment and a familiarity with all relevant facts.<sup>5</sup>

5. Though sincere and tenaciously held to, Dr. Reid's opinion is not well reasoned. In his deposition (CX 17), he cited no medical literature or any supporting medical principles that buttressed his opinion. Dr. Reid could say only that the relative events occurred in "sequence" but acknowledged that his notes reveal that Claimant's September, 1996 back strain had resolved (CX 17 at 17-8) and that there was no evidence of any continuing problem from the 1996 injury (CX 17 at 14-5). Also, Dr. Reid released Claimant to full duty as of January 2, 1997, at which time there was no indication of any continuing problem due to the September 1996 injury (CX 17 at 14). As to the April 1997 injury, Dr. Reid saw Claimant only once and treated his injury as a mild strain (CX 17 at 16-7). However, Dr. Reid acknowledged that this injury "resolved" (CX 17 at 18).

6. Further, Dr. Reid's opinion is not well documented in that he apparently did not review the other physicians' records or Claimant's deposition testimony (CX 17 at 5-6).

For all of these reasons, I find that Claimant has not sustained his burden of

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<sup>4</sup> Dr. Griffith's statement via Claimant's counsel (CX 1) is double hearsay, and I do not accord it much weight.

<sup>5</sup> Some of the physicians' opinion changes can be attributed to the fact that in the interim they had been given more information. For example, Dr. Allen specifically explained his change of views by noting that the change was based on facts that he had not previously known (EX 28).

showing job-related causation.

**ORDER**

It is hereby ORDERED that the claim of Alton R. Branch for temporary total disability compensation is hereby DENIED.

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FLETCHER E. CAMPBELL, JR.  
Administrative Law Judge

FEC/lpr  
Newport News, Virginia